

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| APPLICANT: HALE, <i>ET AL.</i> |) | |
| SERIAL NO.: 10/633,876 |) | EXAMINER: HAGHIGHATIAN, MINA |
| FILED: AUGUST 4, 2003 |) | ART UNIT: 3743 |
| TITLE: RAPID-HEATING DRUG DELIVERY ARTICLE AND METHOD OF USE |) | CONFIRMATION NO.: 5253 |
| |) | |

VIA EFS

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

**TERMINAL DISCLAIMER TO OBVIATE PROVISIONAL DOUBLE
PATENTING REJECTIONS OVER “PRIOR” PATENTS**

The owner, Alexza Pharmaceuticals, Inc., of the entire interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of **prior patent** Nos. 7,585,493, issued on September 8, 2009; and 7,090,830, issued on August 15, 2006 (each hereinafter a “**prior patent**”), as such term is defined in 35 U.S.C. § 154 and 173, and as presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the **prior patent** are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. § 154 and 173 of the **prior patent**, “as the term of said **prior patent** is presently shortened by any terminal disclaimer,” in the event that said **prior patent** later expires for failure to pay a maintenance fee; is held unenforceable; is found invalid by a court of competent jurisdiction; is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321; has all claims canceled by a reexamination certificate; is reissued; or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

The undersigned is an attorney of record.

The undersigned hereby authorizes the charge of the terminal disclaimer fee of \$70.00 or any deficiency of fees to be charged to deposit account No. 19-5117.

Respectfully submitted,

Date September 8, 2009

/Katherine Lobel-Rice/
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